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Paper No. 8

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**JUN 14 2002**

**OFFICE OF PETITIONS**

In re Application of  
Porter et al.  
Application No. 10/057,400  
Filed: January 24, 2002  
Attorney Docket No. OPD002CP-1

:  
: DECISION DISMISSING  
: PETITIONS  
:  
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This is a decision on the communication captioned "Response to Notice of Missing Parts of Application - Filing Date Granted," filed March 18, 2002, which will be treated as (1) a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of January 24, 2002, with Figures 9A through 9C, as part of the original disclosure; and, (2) a petition under 37 CFR 1.183, seeking a waiver of 37 CFR 1.84, requiring submission of substitute drawings.

**Petition Under 37 CFR 1.53:**

On January 24, 2002, applicants filed the above-identified application. However, on February 20, 2002, the Office of Initial Patent Examination mailed a Notice of Missing Parts of Nonprovisional Application, stating that the oath or declaration was unsigned and that Figures 9A through 9C described in the specification appeared to have been omitted from the application. The Notice of Missing Parts indicated that applicants must submit a surcharge for late filing of an oath/declaration and substitute drawings in compliance with 37 CFR 1.84 to avoid abandonment. The Notice of Missing Parts set a shortened statutory period of two (2) months for reply. Extensions of time to respond were permissible under 37 CFR 1.136(a).

In response, on March 18, 2002, applicants filed the present petition, an executed declaration with the surcharge, a petition to make drawing corrections, and one (1) sheet of drawings relabeling Figure 9 as Figures 9A through 9C. Applicants explained that Figures 9A through 9C were not omitted on January 24, 2002, but were labeled only as Figure 9 (i.e. references to Figure 9A, 9B and 9C were omitted). A review of the record reveals that the Office received drawing sheet labeled "Figure 9" with the original application papers.

It is obvious from the petition that no drawing was actually missing on January 24, 2002. Rather, the drawings of Figures 9A through 9C was simply unlabeled as a result of applicants' filing error. However, the Notice of Missing Parts mailed February 20, 2002, was correct in stating that Figures 9A through 9C described in the specification appeared to have been omitted. Therefore, the requirement for the submission of omitted Figures 9A through 9C set forth in the Notice of Missing Parts was proper and will not be withdrawn.

Accordingly, the petition under 37 CFR 1.53 is dismissed.

**Petition Under 37 CFR 1.183:**

In the present petition, applicants "traverse the instant application being characterized as informal." *Petition dated 3/18/02 p. 1.* "In response to the margins of the drawings, Applicants respectfully request that the requirement for formal drawings be held in abeyance until a Notice of Allowance is mailed." *Id.*

Pursuant to 37 CFR 1.84, an applicant is required to submit acceptable drawings that are correct and reproducible. Further, Section 507 of the Manual of Patent Examination Policy explains:

The Office has revised the drawing review process to implement the eighteen-month publication of patent applications. Under the revised drawing review process, the Office of Initial Patent Examination (OIPE) will perform an initial review of drawings in new utility and plant patent applications filed on or after November 29, 2000 to see if the drawings can be effectively scanned for publication purposes. . . .

OIPE inspects the drawings to see if they can be effectively scanned and adequately reproduced. If the drawings are not acceptable, OIPE will object to the drawings and notify applicant that a timely submission of acceptable drawings (e.g., drawings which can be scanned) is required. This initial review process in OIPE is necessary in order to ensure that applications can be timely published.

\* \* \*

If OIPE objects to the drawings and sends applicant a Notice requiring submission of corrected drawings within a set time period (usually two months), corrected drawings must be filed, in paper, to the mailing address set forth in the Notice, along with any other items required by OIPE, to avoid abandonment of the application. . . .

In the present petition, applicants have failed to demonstrate that an extraordinary situation exists, where justice requires waiver of the requirement for substitute drawings in compliance with 37 CFR 1.84, within the time period set for in the Notice of Missing Parts. Thus, the requirement for corrected drawings will not be held in abeyance.

Accordingly, the petition under 37 CFR 1.183 is dismissed.

The fees for filing two (2) petitions, totaling \$260.00, will be charged to Deposit Account No. 15-0680 because the petitions were not necessitated by any error on the part of the United States Patent and Trademark Office.

**Applicants must submit substitute drawings in compliance with 37 CFR 1.84 within TWO (2) MONTHS of the date of this decision in order to avoid abandonment of the application. The period for response is not extendable. See 37 CFR 1.181(f)**

The application is being returned to the Office of Initial Patent Examination for further processing and to await the submission of substitute drawings in compliance with this decision and the requirements of 37 CFR 1.84.

Any inquiries related to this decision should be directed to Petitions Attorney Christina Tartera Donnell at (703) 306-5589.

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